



4. On February 6, 2001 claimant filed an Application Hearing with the Division alleging a June 26, 1996 date of accident.

5. Included in Claimant's Exhibit 1 is a letter dated October 14, 1997 to the Division of Worker's Compensation and an Application for Hearing for an accident of June 24, 1996, signed by claimant and dated July 1, 1997. The employee listed on the Application for Hearing is Victoria Hernandez and the employer is Res Care, Inc./Golden West Skills Center. There is no testimony concerning the exhibit and there is no stipulation that the Application for Hearing was filed with the Division nor that the letter and application were ever mailed.

### Conclusions of Law

1. K.S.A. 44-534(b) requires that an Application for Hearing be filed with the office of the Director within three years of the date of accident or two years from the last payment of compensation, whichever is later. See Kincade v. Cargill, Inc., 27 Kan. App. 2d 798, 11 P.3d 63, *rev. denied* \_\_\_ Kan. \_\_\_ (2000).

2. The Application for Hearing, filed February 6, 2001, was more than three years after the June 26, 1996 accident and was more than two years after the last medical compensation was provided.

3. The current claim is barred because claimant failed to prove that an Application for Hearing was filed within the time limits specified in K.S.A. 44-534 and the time limits were not tolled.

4. As provided by the Act, preliminary hearing findings are not binding but are subject to modification upon a full hearing on the claim.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Independent Medical Examination entered by Administrative Law Judge Pamela J. Fuller on July 18, 2001, should be, and the same is hereby, reversed and benefits are denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2001.

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BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant  
Joseph C. McMillan, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director